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HUMAN RIGHTS COMMITTEE
Fifty-third session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

NEW ZEALAND

1. The Committee considered the third periodic report of New Zealand (CCPR/C/64/Add.10 and HRI/CORE/1/Add.33) at its 1393rd to 1395th meetings, on 23 and 24 March 1995 (see CCPR/C/SR.1393-1395). At its 1411th meeting, on 5 April 1995, the Committee adopted the following comments:

A. Introduction

2. The Committee expresses its appreciation to the State party for its excellent report, which contains detailed information on law and practice relating to the implementation of the Covenant and is in full conformity with the Committee's guidelines. The Committee appreciates the fact that the report shows continuous development in the protection of rights and allows the dialogue with the Committee to take place as an unbroken continuation of the examination of the initial and second reports. The Committee is also grateful for the oral responses provided by the competent delegation and considers that the dialogue with the State party has been most fruitful and constructive.

3. The Committee commends the State party for the core document (HRI/CORE/1/Add.33), which has been drawn up in accordance with the consolidated guidelines for the initial part of reports to be submitted by States parties under the various international human rights instruments (HRI/1991/1).

B. Factors and difficulties affecting the implementation of the Covenant

4. The Committee finds that there are no important difficulties which may affect the effective implementation of the Covenant's provisions by the Government of New Zealand.

C. Positive aspects

5. The Committee notes with appreciation the level of achievement in respect of human rights in New Zealand. It particularly welcomes the positive developments that have been realized following recommendations of the Committee at the end of the consideration of the second periodic report of New Zealand. Among these developments the Committee notes the accession to the First Optional Protocol to the Covenant and the ratification of the Second Optional Protocol to the Covenant following the adoption of the Abolition of the Death Penalty Act, 1989.

6. The Committee considers the adoption and entry into force on 25 September 1990 of the Bill of Rights Act, which expressly affirms New Zealand's commitment to the Covenant and which provides a statutory basis for the protection of human rights and fundamental freedoms in New Zealand, as an important step towards the full protection of the rights set forth in the Covenant. The Committee also welcomes the passage into law of the Privacy Act 1993, which promotes and protects individual privacy, and of the Human Rights Act, which entered into force on 1 February 1994. The latter Act further enhances protection of article 2, paragraph 1, of the Covenant by extending the grounds on which discrimination is prohibited. The Act also expands the role of the Human Rights Commission and enables it to inquire into any matter where it appears that human rights have been infringed.

7. The Committee welcomes widely based legislation to provide protection against domestic violence. The Committee is also pleased to note the provision of appeals procedures for refugees and that applicants for refugee status are entitled to work pending a decision on their status. Planned improvements to prison conditions are also welcome.

8. The Committee welcomes the important developments that have occurred in relation to the interests of the Maori. Among these developments the Committee notes the increasing importance of the work of the Treaty of Waitangi Tribunal in dealing with Maori claims against the Crown. The Committee also appreciates the fact that New Zealand has dedicated the first year of the International Decade of the World's Indigenous People to the Maori language. In this connection, the Committee takes note with satisfaction of the adoption of a language nest programme whereby Maori language, customs and values are taught to pre-school children, as well as other programmes set up to promote Maori language, art and culture.

9. The Committee also welcomes the changes introduced in the electoral law which may provide greater opportunities for the representation of minority groups, Maori and women.

10. With regard to the right of self-determination, the Committee welcomes the development of local institutions of government in Tokelau and the gradual delegation of powers to Tokelauan authorities, which corresponds to the desire of the people of Tokelau to be self-reliant to the greatest extent possible.

D. Principal subjects of concern

11. The Committee regrets that the provisions of the Covenant have not been fully incorporated into domestic law and given an overriding status in the legal system. Article 2, paragraph 2, of the Covenant requires States parties to take such legislative or other measures which may be necessary to give effect to the rights recognized in the Covenant. In this regard the Committee regrets that certain rights guaranteed under the Covenant are not reflected in the Bill of Rights, and that it does not repeal earlier inconsistent legislation, and has no higher status than ordinary legislation. The Committee notes that it is expressly possible, under the terms of the Bill of Rights, to enact legislation contrary to its provisions and regrets that this appears to have been done in a few cases.

12. The Committee expresses concern about the absence of express provision for remedies for all those whose rights under the Covenant or the Bill of Rights have been violated.

13. The Committee regrets that the operation of the new prohibited grounds of discrimination, contained in section 21 of the Human Rights Act 1993, is postponed until the year 2000. It also notes with concern that the prohibited grounds of discrimination do not include all the grounds in the Covenant and, in particular, that language is not mentioned as a prohibited ground of discrimination.

14. The Committee is concerned about provisions in the Criminal Justice Amendment Act which provide for a sentence of indeterminate detention for offenders convicted even once of serious crimes who are likely to re-offend in a similar manner. The imposition of punishment in respect of possible future offences is inconsistent with articles 9 and 14 of the Covenant.

15. In relation to the right of freedom of expression, the Committee expresses its concern over the vagueness of the term "objectionable publication" and the fact that section 121 of the Films, Videos and Publications Classification Act makes the "possession of any objectionable publication" a criminal offence, even if the person concerned has no knowledge or no reasonable cause to believe that the publication is considered to be objectionable.

16. The Committee is concerned about the fact that, while the Human Rights Act contains a provision corresponding to article 20, paragraph 2, of the Covenant, this provision does not include a prohibition of advocacy of religious hatred.

17. The Committee regrets that despite improvements, Maori still experience disadvantages in access to health, education and employment. The Committee is also concerned that the proportion of Maori in Parliament and other high public

offices, liberal professions and in the senior rank of civil service remains low.

18. The Committee also regrets the delay in the submission of reports under the Covenant by the Tokelau and the Cook Islands governments and reminds the Government of New Zealand of its obligations under the Covenant in this regard.

E. Suggestions and recommendations

19. The Committee recommends that the State party take appropriate measures to incorporate all the provisions of the Covenant into domestic law and to provide remedies for all persons whose rights under the Covenant have been violated.

20. The Committee recommends that the Bill of Rights be revised in order to bring it into full consistency with the provisions of the Covenant and to give the courts power as soon as possible to strike down or decline to give effect to legislation on the ground of inconsistency with Covenant rights and freedoms as affirmed in the Bill of Rights.

21. The Committee recommends that the State party revise the provisions relating to "indeterminate sentence of preventive detention" contained in the Criminal Justice Amendment Act in order to bring the Act into full consistency with articles 9 and 14 of the Covenant.

22. The Committee equally recommends amendment of the Films, Videos and Publications Classification Act by a more specific definition of "objectionable publication" or by removing criminal liability for possession without knowledge of or reasonable cause to believe in the objectionability of material.

23. The Committee expresses the hope that any decisions to be taken about future limitations to the entitlement of Maori to advance claims before the Waitangi Tribunal will take full account of Maori interests under the Treaty of Waitangi.

24. The Committee recommends that the State party review and include information in its next report on the procedures established to ensure compliance with the views and recommendations adopted by the Committee under the First Optional Protocol, also bearing in mind its obligations under article 2 of the Covenant.

25. The Committee recommends that the State party review its reservations relating to articles 10 and 22 of the Covenant with a view to withdrawing them.

26. The Committee would appreciate receiving in the next periodic report information on the experience gained in applying the new Electoral Act and about the Equal Employment Opportunity provisions and their effects on women's entitlement to equal pay and equal employment opportunity. The Committee would also like to be informed on further activities of the National Human Rights Commission and the Treaty of Waitangi Tribunal, and about progress in prison reform.